

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8558 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

R.K. PARMAR

Versus

STATE OF GUJARAT & ANOTHER

Appearance:

1. Special Civil Application No. 8558 of 1990

MR MEHUL S SHAH for the Petitioner

MR MUKESH A PATEL, AGP for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/12/2004

ORAL JUDGEMENT

The petitioner, then an Employment Officer under

the Director of Employment and Training, challenges the order dated 13th September, 1989 made by the State Government in exercise of power conferred by sub-clause (i)(1) of clause (aa) of Rule 161(1) of the Bombay Civil Services Rules, 1959 (hereinafter referred to as "the Rules") retiring the petitioner from service on his attaining the age of 50 years.

The petitioner joined the service on 19th May, 1972 under the Director of Employment and Training as Assistant Employment Officer. The said post of Assistant Employment Officer was re-designated as Employment Officer. On petitioner's attaining the age of 50 years his case for premature retirement under the aforesaid Rule 161(1) of the Rules came-up for consideration by the State Government. The Review Committee constituted for the said purpose considered the petitioner's service record and recommended that the petitioner be retired from service in public interest. Pursuant to the said decision, by impugned order dated 13th September, 1989 the petitioner was retired from service. Feeling aggrieved, the petitioner has preferred the present petition.

Chapter IX of the Rules deals with compulsory retirement. Clause (a) of sub-rule (1) of Rule 161 provides for age of superannuation on attainment of which a Government servant shall be compulsorily retired. Sub-clause (i) of clause (aa) of the said Rule 161(1) empowers the appointing authority to retire a Government servant in public interest by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice : "(1) if he is in Class-I or Class-II service or post or in any unclassified gazetted post, the age limit for the purpose of direct recruitment to which is below 35 years, on or after the date on which he attains the age of 50 years."

It is not in dispute that the petitioner entered the service as Assistant Employment Officer which was re-designated as Employment Officer. The petitioner continued in service as Employment Officer. During his service tenure as Employment Officer, adverse entries were made in the service record of the petitioner for eleven years during the years 1973 to 1988. All along the petitioner was considered to be a person of average caliber, lacking in resourcefulness and initiative. The petitioner's service was thus found to be below par. The said adverse entries were communicated to the petitioner from time to time. The petitioner was permitted to make representations against such adverse entries. The said

representations were, however, rejected at the relevant time.

Learned advocate Mr.Mehul Shah has appeared for the petitioner. He has submitted that the orders made on the said representations did not give out reasons i.e. the petitioner's representations were rejected by cryptic orders. As the respondent authority failed to give reasons for retention of adverse entries, such adverse entries should not have been considered while considering the petitioner's case for retention in service/retirement from service on his attaining the age of 50 years. Except the said adverse entries there was nothing adverse in the service record of the petitioner which would entail premature retirement under Rule 161(1)(aa) of the Rules. He has further submitted that the petitioner's representations i.e. the representations made by the petitioner against the adverse entries for the years 1985-86, 1986-87 and 1987-88 were not decided till the petitioner was retired from service. In other words, the validity of the aforesaid adverse entries though was at large before the Government, the same were considered against the petitioner while considering the petitioner's case for premature retirement in public interest. He has also submitted that at the relevant time a criminal case was pending against the petitioner. The said fact has also been considered against the petitioner. However, though in the said criminal case the petitioner was acquitted by the competent court. In the submission of Mr.Shah the impugned order of premature retirement has been made on extraneous materials. He has relied upon the Government Resolution dated 28th July, 1987. He has submitted that by the said Resolution the Government has issued consolidated instructions with respect to premature retirement of Government servants under Rule 161(1)(aa) of the Rules. The said instructions with respect to the retirement of Government servants at the age of 50 years read as under :

"(i) Whether any disciplinary proceedings are pending or contemplated against the officer ? In case of a Government servant whose integrity is in doubt, it would be appropriate to consider him for premature retirement irrespective of the assessment of his ability or efficiency in work. In other words, even if an officer's performance is good, he is efficient and physically and mentally fit, he can be prematurely retired, if Competent Authority comes to conclusion that his integrity is doubtful.

(ii) Whether the officer is physically as well as mentally fit for retention in service.

(iii) Whether the WHOLE service record of the officer is atleast SATISFACTORY ? If an officer is physically and mentally fit, and has earned SATISFACTORY confidential reports i.e. not below the average standard, he should not be prematurely retired."

Mr.Shah has submitted that lack of integrity can be the ground for premature retirement of a servant only in case a disciplinary proceeding is pending or is contemplated. In absence of such pending or contemplated disciplinary proceeding, if the Government servant is physically and mentally fit and if his service record/performance is satisfactory i.e. it is average or above, such a servant cannot be retired prematurely in exercise of power conferred by Rule 161(1)(aa) of the Rules. He has further submitted that the procedure set-out in clause (IV) requires that such consideration shall take place atleast 3 months before the Government servant attains the age of 50 years. He has submitted that in the present case the petitioner was retired from service at the age of 52 years. Mr.Shah has submitted that the petitioner has categorically stated that his case for retention in service was indeed considered when he attained the age of 50 years. At the time the State Government had decided to continue the petitioner in service after he attained the age of 50 years. The petitioner, therefore, could not have been retired from service at the age of 52 years.

He has relied upon the judgment of this Court in the matter of J.K.Rasania v/s. Gujarat Housing Board [2003(1) GLR 466]. In the said matter the learned Judge has held that, "...The essence of the discussion, is therefore, that there must be both the formation of the opinion on the part of the appointing authority and also an expressing of the opinion on his part before the power of compulsory retirement can be exercised." Further in the said case the factum of pending disciplinary proceedings against the petitioning Government servant was not taken into consideration. The learned Judge was of the opinion that the said infirmity would vitiate the order of premature retirement. It is observed that, "...Yet if, on fundamental principles, it is found that the order is passed on irrelevant considerations or extraneous considerations or has been passed without noting the relevant and obviously extant facts, the order becomes vulnerable."

Learned AGP Mr.Patel has contested the petition. He has produced the original record for perusal by the Court and has relied upon the judgment of the Hon'ble Supreme Court in the matter of State of U.P. and another v/s. Lalsa Ram [AIR 2001 SC 1137]. In the said matter the very issue was under consideration by the Hon'ble Supreme Court. The Court has culled the principles in paragraph 9 of the judgment as under :

- "(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of an performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merits (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were taken into consideration.

That circumstance by itself cannot be a basis for interference."

On perusal of the record, it appears that the process of considering the cases of the officers serving under the Director of Employment and Training for continuance/premature retirement on attaining the age of 50 or 55 years (as the case may be) in the year 1988 was initiated in the month of February, 1988. In case of the petitioner the final decision was taken by the Committee in its meeting held on 24th January, 1989. The Committee considered the service record of the petitioner and the factum of the pending criminal case. It was recommended that the petitioner be retired from service. The said recommendation was accepted by the State Government (Secretary, Labour and Education Department) on 16th March, 1989. It further appears that since the decision of the State Government to retire the petitioner prematurely, by order dated 23rd June, 1989 the petitioner was visited with punishment of withholding of one increment without future effect. By yet another order dated 7th August, 1989 the petitioner was issued censure. Both the aforesaid punishments were imposed upon the petitioner for illegality committed in recommending the name of a candidate whose registration was cancelled.

It is thus apparent that the process which had started long before the petitioner attained the age of 50 years was completed almost after two years. Hence, it is not right to say that the petitioner's case was once considered and a conscious decision to continue him in service after he attained the age of 50 years was taken. Further, as noticed from the confidential report of the petitioner, almost all throughout his service career of more than 25 years the petitioner had earned adverse remarks which had become final. The representations made by the petitioner with respect to the last three years i.e. the years 1985-86, 1986-87 and 1987-88 were still under consideration by the State Government. As held by the Hon'ble Supreme Court even such adverse remarks are required to be taken into consideration while considering the retention/retirement of a Government servant in public interest.

In my view, the impugned order cannot be vitiated on the ground that the said adverse entries were taken into consideration. The reliance placed on the overall assessment of the petitioner as reflected on pp.73 and 74 of the paper book is misplaced. In my view, the State Government is required to consider the service record and

form its own opinion. The overall assessment made by the reporting officer would not be conclusive.

As to the instructions issued by the State Government, I do not agree with Mr. Shah that unless the case of a Government servant is considered before he attains the age of 50 years such servant cannot be retired once he attains the age of 50 years. It is well-settled that a Government servant can be retired on reaching the age of 50 years (as it is the case in the present case) or at any time thereafter provided that it is in public interest to retire such person from service. I also do not agree that unless a disciplinary proceeding is pending or contemplated the factum of doubtful integrity should not be taken into consideration. Such is not the intention conveyed by the State Government under the above referred instructions.

As to the performance of the petitioner, as recorded hereinabove, the State Government has not considered the same to be "satisfactory". On perusal of the adverse entries it is evident that the petitioner's performance as a Class-II officer was far from being satisfactory. Further, the impugned order dated 13th September, 1989 did record that the petitioner was being retired from service prematurely in exercise of power conferred by sub-clause (i)(1) of clause (aa) of Rule 161(1) of the Rules. The petitioner has also been ordered to be paid three months' pay in lieu of notice. The said order is, therefore, in consonance with the legal requirement. It should be noted that pursuant to the order of this Court (Coram: S.K.Keshote, J.) made on 28th September, 2000 the petitioner's representation against the order of premature retirement was considered by the State Government. The State Government, after considering the relevant factors, confirmed the order of premature retirement. Thus, the petitioner's case for premature retirement at the age of 50 years was considered in accordance with the instructions contained in Government Resolution dated 28th July, 1987. The petitioner's service record was far from being satisfactory. The decision of the State Government does not warrant interference.

Learned advocate Mr. Shah states that though the petitioner has been retired from service as far back as on 13th September, 1989, in view of the pendency of this petition, he has not been paid the retiral dues. In the event the petitioner has not been paid pension and other retiral dues, the same shall be calculated and paid forthwith.

Subject to the above direction the petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)
/sakka